



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,074	01/24/2002	Hisayuki Kunigita	SCEIYA 3.0-113	3352

530 7590 08/22/2005

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK  
600 SOUTH AVENUE WEST  
WESTFIELD, NJ 07090

EXAMINER
----------

ROSEN, NICHOLAS D

ART UNIT	PAPER NUMBER
----------	--------------

3625

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/057,074	<b>Applicant(s)</b> KUNIGITA, HISAYUKI	
	<b>Examiner</b> Nicholas D. Rosen	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/13/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-15 and 17-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-15 and 17-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

4

### DETAILED ACTION

Claims 1-3, 5-15, and 17-28 have been examined.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1, as amended, recites, "a second acquisition unit operable to acquire image data including a 3-dimensional image of the one commodity from the first storage unit." The specification describes acquiring image data, and manipulating data to produce 3-dimensional images, but does not describe acquiring a 3-dimensional image of the one commodity as recited.

Claims 8-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 8, as amended, recites, "a second acquisition unit operable to acquire image data including a 3-dimensional image of the

Art Unit: 3625

one commodity from the first storage unit.” The specification describes acquiring image data, and manipulating data to produce 3-dimensional images, but does not describe acquiring a 3-dimensional image of the one commodity as recited.

Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 12, as amended, recites, “a second acquisition unit operable to acquire image data including a 3-dimensional image of the one commodity from the first storage unit.” The specification describes acquiring image data, and manipulating data to produce 3-dimensional images, but does not describe acquiring a 3-dimensional image of the one commodity as recited.

Claims 13-15 and 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 13, as amended, recites, “a second acquisition unit operable to acquire image data including a 3-dimensional image of the one commodity from the first storage unit.” The specification describes acquiring image data, and manipulating data to produce 3-dimensional images, but does not describe acquiring a 3-dimensional image of the one commodity as recited.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 21, as amended, recites, "an acquisition unit operable to acquire image data including a 3-dimensional image of the one commodity." The specification describes acquiring image data, and manipulating data to produce 3-dimensional images, but does not describe acquiring a 3-dimensional image of the one commodity as recited.

Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 22, as amended, recites, "an acquisition unit operable to acquire image data including a 3-dimensional image of the one commodity from the storage device." The specification describes acquiring image data, and manipulating data to produce 3-dimensional images, but does not describe acquiring a 3-dimensional image of the one commodity as recited.

Claims 23-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention. Claim 23, as amended, recites, "acquiring image data corresponding to the particular commodity including a 3-dimensional image of the one commodity from . . . a first storage unit." The specification describes acquiring image data, and manipulating data to produce 3-dimensional images, but does not describe acquiring a 3-dimensional image of the one commodity as recited.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

#### **Claims 1-3 and 5-7**

Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). As per claim 1, Bornstein discloses an electronic system, comprising: a user terminal operable by a user, the user terminal including a display (column 6, lines 41-61; column 9, lines 23-53); a first unit storage operable to store image data of commodities (column 16, line 44, through column 17, line 5); a second storage unit operable image data of backgrounds (column 16, line 54; column 17, lines 19-50); a first acquisition unit operable to acquire content data of one of the commodities (column 18, lines 1-10; column 21, lines 34-39) and content data of one of the backgrounds selected by the user (column 13, lines 15-31; column 16, lines

Art Unit: 3625

31-43; column 19, lines 15-32); a second acquisition unit operable to acquire image data of the one commodity from the first storage unit (column 18, lines 1-10; column 21, lines 34-39) and image data of the one background from the second storage unit (column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32); a graphics unit operable to produce a display image by combining an image of the one commodity created from the image data of the one commodity and an image of the one background created from the image data of the one background (Abstract; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and a supply unit operable to supply the display image to the user terminal, thereby enabling the display image to be displayed on the display (Abstract; column 21, lines 40-66; column 22, line 53, through column 23, line 9). Bornstein does not disclose that the commodities (articles of clothing) in his invention are for sale to the user, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the commodities be for sale to users, and the electronic system therefore be an electronic commerce system, for the obvious advantage of profiting from the sale of commodities.

Bornstein does not quite explicitly disclose that the graphics unit is operable to extract coordinates of the 3-dimensional image of the one commodity that can be seen from a viewpoint selected by the user from among a plurality of different user-selectable viewpoints, but extraction of coordinates is implied (column 9, lines 54-68; column 25,

Art Unit: 3625

lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry teaches a commodity that can be seen from a viewpoint selected by a user from among a plurality of user-selectable viewpoints (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the graphics unit extract the coordinates, and for an image that can be seen from a selected viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

Bornstein further discloses acquiring (by manipulation) a 3-dimensional image of the commodity (column 4, lines 41-61; column 5, lines 12-39).

As per claim 3, Bornstein discloses that the graphics unit includes a unit for rotating the image of the one commodity (column 20, lines 31-48; column 21, lines 41-53).

As per claim 5, Bornstein discloses an acquisition unit operable to acquire from a user terminal image data of a background prepared by the user and to store the custom image in a second storage unit (column 19, lines 15-32).

As per claim 6, Bornstein does not expressly disclose adjusting a scale of the custom image data prepared by the user, but does disclose adjusting a scale of an image of the commodity to fit a custom image of the background (column 20, lines 31-48). Shrinking one image is largely equivalent to expanding the other, and vice versa; hence, adjusting a scale of the custom image data prepared by the user is held to have been obvious to one of ordinary skill in the art of electronic commerce at the time of



Art Unit: 3625

applicant's invention, for the stated advantage of making the commodity image and background image fit one another appropriately.

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein and Pry as applied to claim 1 above, and further in view of official notice. As per claim 2, Bornstein discloses scaling an image of a selected commodity for a display image (column 20, lines 31-48), which may be read as incorporating a scale image into the display image, but if "incorporating a scale image into the display image" is to be read as incorporating some other image to show scale, then official notice is taken that it is well known to incorporate a scale image (e.g., an image of a ruler or other scale) into a display image. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the graphics unit include a unit for incorporating a scale image into the display image, for the obvious advantage of assisting users in determining the size of objects shown in the image or images.

As per claim 7, Bornstein does not disclose that the user terminal is a mobile communication terminal, but official notice is taken that mobile communication terminals (e.g., cell phones, laptop computers, etc.) are well known. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the user terminal to be a mobile communication terminal, for the obvious advantage of enabling users to view images and make purchases when not sitting at a fixed terminal.

**Claims 8-11**

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). Bornstein discloses an electronic system, comprising: a user terminal operable by a user, the user terminal including a display (column 6, lines 41-61; column 9, lines 23-53); a first unit storage operable to store image data of commodities (column 16, line 44, through column 17, line 5); a second storage unit operable image data of backgrounds (column 16, line 54; column 17, lines 19-50); a first acquisition unit operable to acquire content data of one of the commodities (column 18, lines 1-10; column 21, lines 34-39) and content data of one of the backgrounds selected by the user (column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32); a second acquisition unit operable to acquire image data of the one commodity from the first storage unit (column 18, lines 1-10; column 21, lines 34-39) and image data of the one background from the second storage unit (column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32); a graphics unit operable to produce a display image by combining an image of the one commodity created from the image data of the one commodity and an image of the one background created from the image data of the one background (Abstract; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and a supply unit operable to supply the display image to the user terminal, thereby enabling the display image to be displayed on the display (Abstract; column 21, lines 40-66; column 22, line 53, through column 23, line 9). Bornstein does not disclose a commodity purchase assistance apparatus connected to the user terminal via a network, said apparatus including the storage units, acquisition units, etc., but Pry

discloses business websites accessible over the Internet for electronic shopping and purchasing (entire article). Similarly, Bornstein does not disclose that the commodities (articles of clothing) in his invention are for sale to the user, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include a commodity purchase assistance apparatus in the system, with other listed unit being included in the commodity purchase assistance apparatus, to have the commodities be for sale to users, and to have the electronic system therefore be an electronic commerce system, for the obvious advantage of profiting from the sale of commodities.

Bornstein does not quite explicitly disclose that the graphics unit is operable to extract coordinates of the 3-dimensional image of the one commodity that can be seen from a viewpoint selected by the user from among a plurality of different user-selectable viewpoints, but extraction of coordinates is implied (column 9, lines 54-68; column 25, lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry teaches a commodity that can be seen from a viewpoint selected by a user from among a plurality of user-selectable viewpoints (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the graphics unit extract the coordinates, and for an image that can be seen from a selected

viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

Bornstein further discloses acquiring (by manipulation) a 3-dimensional image of the commodity (column 4, lines 41-61; column 5, lines 12-39).

Claims 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein and Pry as applied to claim 8 above, and further in view of official notice. As per claim 9, neither Bornstein nor Pry discloses that the commodity purchase assistance apparatus further includes a unit to allow the commodity purchase assistance apparatus to function as a server, but official notice is taken that it is well known for computers used to present web sites in electronic commerce, such as the web sites taught by Pry, to include units to allow them to function as servers. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the commodity purchase assistance apparatus further to include a unit to allow the commodity purchase assistance apparatus to function as a server, for the obvious advantage of enabling e-commerce to be feasibly conducted.

As per claim 10, neither Bornstein nor Pry expressly discloses a transmitter unit included in the user terminal, the transmitter unit operable to transmit to the commodity purchase assistance apparatus a request to purchase a commodity, but official notice is taken that such transmitter units (e.g., modems and other requisite components of personal computers) are well known; people could not feasibly order goods over the Web without them. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the user terminal to

include such a transmitter unit, for the obvious advantage of enabling people to make purchases over the Internet.

As per claim 11, neither Bornstein nor Pry expressly discloses that the commodity purchase assistance apparatus includes a unit operable to make an arrangement for delivering the commodity when the request for purchasing the commodity is transmitted thereto from the user terminal, but official notice is taken that such units are well known. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the commodity purchase assistance apparatus to include such a unit, for the obvious advantage of enabling requested commodities to be delivered as ordered, without the trouble and expense of arranging for deliveries manually.

#### **Claim 12**

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"), on essentially the same grounds set forth above in the rejection of claim 8.

#### **Claims 13-15 and 17-20**

Claims 13, 15, 17, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality") on essentially the same grounds set forth above in the rejection of claim 8 (largely parallel to claim 13), and claims 3, 4, 5, 6,

and 11, respectively; grounds for rejecting claim 19 on this art is set forth below. Claim 13 is broader than claims 8 and 12 in that it omits recitation of a user terminal.

Claim 15 is essentially parallel to claim 3.

Claim 17 is essentially parallel to claim 5.

Claim 18 is essentially parallel to claim 6.

Claim 20 is essentially parallel to claim 11.

As per claim 19, Bornstein discloses that image data of the one background is stored in advance in a second storage unit or supplied from the user terminal (column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32).

Claim 14 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein and Pry as applied to claim 13 above, and further in view of official notice. Claim 14 is parallel to claim 2, and rejected on essentially the same grounds set forth with regard to claim 2 above.

#### **Claim 21**

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). Bornstein discloses a terminal operable by a user, the terminal being connected via a network to a storage unit operable to store image data of commodities (column 18, lines 1-10; column 21, lines 34-39) and to store image data of backgrounds (column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32), comprising: a display (column 6, lines 41-61; column 9, lines 23-53); a unit operable by the user to select one of the commodities and one of the backgrounds (column 6, lines

41-61; column 9, lines 23-53; column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32); an acquisition unit operable to acquire image data of the one commodity and image data of the one background from the storage device (column 13, lines 15-31; column 16, lines 31-43; column 18, lines 1-10; column 19, lines 15-32; column 21, lines 34-39); a graphics unit operable to produce a display image by combining an image of the one commodity created from the image data of the one commodity and an image of the one background created from the image data of the one background (Abstract; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and a unit operable to display the display image on the display (column 6, lines 41-61; column 9, lines 23-53; it is obvious for the terminal to include units operable to enable it to carry out its functions). Bornstein does not disclose that the commodities (articles of clothing) in his invention are for sale to the user, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the commodities be for sale to the user, and the electronic system therefore be an electronic commerce system, for the obvious advantage of profiting from the sale of commodities.

Bornstein does not quite explicitly disclose that the graphics unit is operable to extract coordinates of the 3-dimensional image of the one commodity that can be seen from a viewpoint selected by the user from among a plurality of different user-selectable

viewpoints, but extraction of coordinates is implied (column 9, lines 54-68; column 25, lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry teaches a commodity that can be seen from a viewpoint selected by a user from among a plurality of user-selectable viewpoints (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the graphics unit extract the coordinates, and for an image that can be seen from a selected viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

Bornstein further discloses acquiring (by manipulation) a 3-dimensional image of the commodity (column 4, lines 41-61; column 5, lines 12-39).

## **Claim 22**

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). Bornstein discloses a terminal operable by a user, the terminal being connected via a network to a storage unit operable to store image data of commodities (column 18, lines 1-10; column 21, lines 34-39) and to store image data of backgrounds (column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32), comprising: a display (column 6, lines 41-61; column 9, lines 23-53); a storage unit operable to store image data of backgrounds (column 16, line 54, through column 17, line 5; column 17, lines 19-50); a unit operable by the user to select one of the commodities and one of the backgrounds (column 6, lines 41-61; column 9, lines 23-53;



Art Unit: 3625

column 13, lines 15-31; column 16, lines 31-43; column 19, lines 15-32); an acquisition unit operable to acquire image data of the one commodity and image data of the one background from the storage device (column 13, lines 15-31; column 16, lines 31-43; column 18, lines 1-10; column 19, lines 15-32; column 21, lines 34-39); a graphics unit operable to produce a display image by combining an image of the one commodity created from the image data of the one commodity and an image of the one background created from the image data of the one background (Abstract; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and a unit operable to display the display image on the display (column 6, lines 41-61; column 9, lines 23-53; it is obvious for the terminal to include units operable to enable it to carry out its functions). Bornstein does not disclose that the commodities (articles of clothing) in his invention are for sale to the user, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the commodities be for sale to the user, for the obvious advantage of profiting from the sale of commodities.

Bornstein does not quite explicitly disclose that the graphics unit is operable to extract coordinates of the 3-dimensional image of the one commodity that can be seen from a viewpoint selected by the user from among a plurality of different user-selectable viewpoints, but extraction of coordinates is implied (column 9, lines 54-68; column 25, lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry

Art Unit: 3625

teaches a commodity that can be seen from a viewpoint selected by a user from among a plurality of user-selectable viewpoints (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the graphics unit extract the coordinates, and for an image that can be seen from a selected viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

Bornstein further discloses acquiring (by manipulation) a 3-dimensional image of the commodity (column 4, lines 41-61; column 5, lines 12-39).

### **Claims 23-25**

Claims 23, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). As per claim 23, Bornstein discloses a method comprising: acquiring content data of a particular commodity and content data of a background selected by the user via a user terminal (column 13, lines 15-31; column 19, lines 15-32); acquiring image data corresponding to the particular commodity (column 16, line 44, through column 17, line 5; column 18, lines 1-13; column 21, lines 34-39) and image data corresponding to the selected background from a storage unit (column 19, lines 15-32); producing a display image by combining an image of the particular commodity and an image of the selected background from the acquired image data (Abstract; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and displaying the display image on a display of the user terminal

Art Unit: 3625

(Abstract; column 6, lines 41-61; column 9, lines 23-53; column 21, lines 40-66; column 22, line 53, through column 23, line 9). Bornstein does not disclose that the method is a method of assisting a user in purchasing commodities, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the commodities be for sale to the user, for the obvious advantage of profiting from the sale of commodities, making the method therefore a method of assisting a user in purchasing commodities.

Bornstein does not quite explicitly disclose extracting coordinates of the 3-dimensional image of the particular commodity that can be seen from a viewpoint selected by the user from among a plurality of different user-selectable viewpoints, but extraction of coordinates is implied (column 9, lines 54-68; column 25, lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry teaches a commodity that can be seen from a viewpoint selected by a user from among a plurality of user-selectable viewpoints (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the graphics unit extract the coordinates, and for an image that can be seen from a selected viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

Bornstein further discloses acquiring (by manipulation) a 3-dimensional image of the commodity (column 4, lines 41-61; column 5, lines 12-39).

As per claim 24, Bornstein discloses storing image data of a background prepared by the user in the storage unit (column 19, lines 15-32).

As per claim 25, Bornstein does not expressly disclose adjusting a scale of the custom image data prepared by the user, but does disclose adjusting a scale of an image of the commodity to fit a custom image of the background (column 20, lines 31-48). Shrinking one image is largely equivalent to expanding the other, and vice versa; hence, adjusting a scale of the custom image data prepared by the user is held to have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention, for the stated advantage of making the commodity image and background image fit one another appropriately.

#### **Claim 26**

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). Bornstein discloses an apparatus comprising: a commodity information database (column 16, line 54; column 17, lines 19-39); means for producing a composite image by combining an image of a commodity and an image of a background in accordance with information about the commodity and the background selected by the user based on the database (Abstract; column 17, lines 19-39; column 18, lines 1-13; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and means for supplying the composite image via a network to a terminal

operable by the user, thereby enabling the composite image to be displayed on a display of the terminal (Abstract; column 6, lines 41-61; column 9, lines 23-53).

Bornstein does not disclose that the commodities (articles of clothing) in his invention are for sale to the user, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the commodities be for sale to users, and the apparatus therefore be a commodity purchase assistance apparatus, for the obvious advantage of profiting from the sale of commodities.

Bornstein does not quite explicitly disclose extracting coordinates of the 3-dimensional image of the particular commodity that can be seen from a viewpoint selected by the user, but extraction of coordinates is implied and (column 9, lines 54-68; column 25, lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry teaches a commodity that can be seen from a viewpoint selected by a user (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the graphics unit extract the coordinates, and to have an image that can be seen from a selected viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

It is noted that claim 26 uses "means for" language. Nonetheless, it is not treated as invoking 35 U.S.C. 112, sixth paragraph. If Applicant wishes to invoke 35 U.S.C.

112, sixth paragraph, Applicant should provide an explicit statement to that effect. 35

U.S.C. 112, sixth paragraph states:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

#### **Claim 27**

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). Bornstein discloses a system comprising a server (Abstract; column 16, line 31, through column 15, line 5) including: a commodity information database (column 16, line 54; column 17, lines 19-39); means for producing a composite image by combining an image of a commodity and an image of a background in accordance with information about the commodity and the background selected by the user based on the database (Abstract; column 17, lines 19-39; column 18, lines 1-13; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and a terminal operable by the user to view the composite image (Abstract; column 6, lines 41-61; column 9, lines 23-53). Bornstein does not disclose that the terminal is operable to transmit a request to purchase the commodity, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"), and e-commerce systems such as

those taught by Pry would be inoperative unless the user terminals were operable to transmit requests to purchase desired commodities. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the terminal be operable to transmit a request to purchase the commodity, for the obvious advantages of being able to buy desired commodities, and, from the other perspective, to profit by the sale of commodities.

Bornstein does not quite explicitly disclose extracting coordinates of the 3-dimensional image of a commodity that can be seen from a viewpoint selected by the user from among a plurality of different user-selectable viewpoints, but extraction of coordinates is implied and (column 9, lines 54-68; column 25, lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry teaches a commodity that can be seen from a viewpoint selected by a user (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to extract the coordinates, and to have an image that can be seen from a selected viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

It is noted that claim 27 uses "means for" language. Nonetheless, it is not treated as invoking 35 U.S.C. 112, sixth paragraph. If Applicant wishes to invoke 35 U.S.C. 112, sixth paragraph, Applicant should provide an explicit statement to that effect. 35 U.S.C. 112, sixth paragraph states:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of

structure, material or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

**Claim 28**

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein (U.S. Patent 6,144,388) in view of Pry ("Online Retailers Add 3-D, Music, to Web Sites for Sense of Reality"). Bornstein discloses a system having a first apparatus connected to a network (Abstract; column 16, line 31, through column 15, line 5) and a second apparatus connected to the network and operable by a user (Abstract; column 6, lines 41-61; column 9, lines 23-53), wherein the first apparatus comprises: means for producing a composite image by combining an image of a commodity and an image of a background (Abstract; column 17, lines 19-39; column 18, lines 1-13; column 21, lines 40-66; column 22, line 53, through column 23, line 9); and means for transmitting the composite image to the second apparatus (Abstract; column 6, lines 41-61; column 9, lines 23-53; column 22, line 53, through column 23, line 9). Bornstein does not disclose that his system is an electronic commerce system having a commodity purchase assistance capability, or that it comprises means for producing information needed to make an arrangement for delivering the commodity to the user in response to a request for purchasing the commodity, but Pry teaches applying manipulation of images to commodities for sale (see especially six paragraphs beginning from, "More and more, e-retailers are using technology," and two paragraphs beginning from, "The future, he says, is in allowing"), and e-commerce web sites such as those taught by Pry would be



inoperative unless the servers included means for producing information needed to make arrangements for delivering commodities to purchasers in response to requests. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such means, for the obvious advantage of profiting from the sale of commodities.

Bornstein does not quite explicitly disclose means for extracting coordinates of the 3-dimensional image of the one commodity that can be seen from a viewpoint selected by the user from among a plurality of different user-selectable viewpoints, but extraction of coordinates is implied and (column 9, lines 54-68; column 25, lines 40-61), and in any case requisite to Bornstein's disclosed procedures. Pry teaches a commodity that can be seen from a viewpoint selected by a user from among a plurality of user-selectable viewpoints (three paragraphs beginning from "Manolo Blahnik merchandise"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to extract the coordinates, and to have an image that can be seen from a selected viewpoint of a plurality of viewpoints, for the stated advantage of helping shoppers see better (and therefore be more likely to buy).

It is noted that claim 26 uses "means for" language. Nonetheless, it is not treated as invoking 35 U.S.C. 112, sixth paragraph. If Applicant wishes to invoke 35 U.S.C. 112, sixth paragraph, Applicant should provide an explicit statement to that effect. 35 U.S.C. 112, sixth paragraph states:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of

structure, material or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

### ***Response to Arguments***

Applicant's arguments filed June 13, 2005, have been fully considered but they are not persuasive. Applicant argues that Pry merely describes a system which allows sellers to post images of ware which can be viewed from different angles, but disputes that Pry refers to use of a 3-dimensional image. Examiner responds that Pry teaches "a three-dimensional shoe gallery," and quotes Stu Roberson as saying, "These are virtual walk-arounds. You can walk around an object or even see it in the environment in which it actually exists." Later, Pry's article warns, "Depending on how much zip there is in your memory system, 3-D imagery and cyberstore music may add hours to your virtual trip, all in the name of atmosphere," a concern that would not arise if there were no 3-D imagery.

It is true that Pry does not teach extraction of coordinates from a 3-dimensional image, but Bornstein is highly suggestive of this, as set forth in the 103 rejections above.

Some of the new wording which Applicant has added to the claims is supported by paragraphs [0043] and [0069], as Applicant helpfully pointed out, but the support for other claim language is questionable, as set forth by Examiner in the rejections under 112, first paragraph, set forth above.

The common knowledge or well-known in the art statements in the previous office action are taken to be admitted prior art, because Applicant did not traverse Examiner's taking of official notice.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Riley et al. (U.S. Patent 5,257,203) disclose a method and apparatus for manipulating computer-based representations of objects of complex and unique geometry. Takeuchi et al. (U.S. Patent 5,664,083) disclose a graphic display apparatus. Andersson (U.S. Patent 6,046,749) discloses a method for the modification of three-dimensional objects. Balter et al. (U.S. Patent 6,901,379) disclose online shopping with virtual modeling and peer review. Korobkin (U.S. Patent 6,912,293) discloses a photogrammetry engine for model construction.

Hiroike et al. (U.S. Patent Application Publication 2001/0009418) disclose a method of displaying objects in a virtual 3-dimensional space. Giannini (U.S. Patent Application Publication 2005/0071257) discloses merged images viewed via a virtual storage closet.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 3625

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Nicholas D. Rosen*

**NICHOLAS D. ROSEN  
PRIMARY EXAMINER**

August 18, 2005